



महाराष्ट्र शासन राजपत्र

भाग एक-ल

वर्ष २, अंक १२]

गुरुवार ते बुधवार, मार्च २४-३०, २०१६/चैत्र ४-१०, शके १९३८

[पृष्ठे २४, किंमत : रुपये २३.००

प्राधिकृत प्रकाशन

(केंद्रीय) औद्योगिक विवाद अधिनियम व मुंबई औद्योगिक संबंध अधिनियम यांखालील
(भाग एक, चार-अ, चार-ब आणि चार-क यांमध्ये प्रसिद्ध केलेल्या अधिसूचना, आदेश व निवाडे यांव्यतिरिक्त)
अधिसूचना, आदेश व निवाडे.

OFFICE OF THE ADDITIONAL COMMISSIONER OF LABOUR, NAGPUR

Civil Lines, Nagpur, dated the 11th August 2005.

NOTIFICATION

No. ALC/ ADJ/ PUB/ IT/ NAG./11/05.—in pursuance of section 17 of the Industrial Dispute Act, 1947 (XIV of 1947) read with Government Notification, Industry Energy and Labour Department, No.IDA/2002/5686/(2882)/Lab-3, dated the 19th August 2003. The Additional Commissioner of Labour Nagpur hereby publishes the Enclosed Award of the Industrial Court Nagpur referred for adjudication by the Additional Commissioner of Labour Nagpur in reference IT/12/97 in the Industrial Dispute between M/s. The Divisional Controller, Maharashtra State Road, Transport Corporation, Nagpur and Maharashtra Pariwahan Mazdoor Union Nagpur.

BEFORE SHRI A. S. SHIVANKAR, B.com., LL.B.
PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, NAGPUR

Reference (IT) No. 12 OF 1997.—Adjudication between The Divisional Controller, M. S. Road Transport Corporation, Rly. Station Road, Nagpur—*Party No. 1*—versus—Its Workman, through the Divisional Sec. Mah. Pariwahan Mazdoor Union, C/o. Shri D. D. Choube, Advocate, Tilak Statue, Mahal, Nagpur—*Party No. 2*.

In the matter of reference under section 10(1)(d) R/w. Sec. 12(5) of Industrial Dispute Act, 47.

Advocates.— Shri P. N. Khadgi, for Party No. 1.

Shri D. D. Choube, for Party No. 2.

Award

(Passed on this 17th December 2002)

In exercise of the powers under section 12(4) of the Industrial Disputes Act the Government of Maharashtra has referred this dispute to this Court for Award under section 10(1) (d) of I.D. Act. The schedule of dispute is as follows :—

“ The punishment order dated 23rd September 1993 regarding stoppage of increments for three years with cumulative effect awarded to Shri Vaidhya and suspension order dated 17th August 1993 also should be withdrawn.”

2. Mr. Vaidhya who happens to be an employee of Party No. 1, in his statement of claim at Exh. 12 averred that since 10 years he has been working as a Mazdoor on time-scale in Civil Engineering Section at Divisional office. On 26th July 1993 he attended the duty about 15 minutes late. He assigned the reason for delay that because of urgent call he had been to his native. His wife was unwell and after getting the medical treatment for her he got himself ready to attend the duties but the bus by which he travelled from Wardha to Nagpur was late. Mr. Ikhari, the Junior Engineer working in section directed him to put the time of arrival in the muster, and on his refusal Mr. Ikhari reported the matter to the Divisional Controller. He distorted the fact to the extent that Mr. Vaidhya behaved in a blatant and brazen manner. He was quite insubordinate. In the wake of said false report he was served with a charge-sheet pregnant with charges under clauses 1, 20, 22 and 28 of Discipline and Appeal procedure. On the guise of the enquiry he was placed under suspension *vide* order dated 17th August 1993. The suspension order later on came to be withdrawn with effect from 9th September 1993 just within a month. He alleged that the charges levelled against him were absolutely false. The E. O. failed to appreciate the evidence in proper perspective. The findings of the E. O. were perverse. He ought to have exonerated him from all the charges. But instead he recorded the finding of misconduct on the part of the employee under the aforesaid clauses. Consequently, the disciplinary authority awarded the punishment of stopping three increments with Cumulative effect. This punishment was absolutely disproportionate, may, unwarranted, and more so the order of suspension was also unnecessary. Hence the punishment deserves to be set aside and the period of suspension should be treated as a duty period.

3. The Party No. 1 in its written statement has again said all the allegations. It has justified the chargesheet, departmental enquiry held against him, the punishment awarded and also the order of suspension. It has submitted that there is no substance in the said dispute and the reference deserves to be answered in the negative.

4. Both the parties adduced no oral evidence. They relied on the enquiry proceeding produced on the record of this Court, and advanced their argument with reference to it.

5. Initially I would deal with a question of suspension order dated 17th August 1993. According to Party No. 1, with a view to avert any interference in an enquiry or tampering the evidence the complainant was placed under suspension after he was served with a charge-sheet. The departmental enquiry has also been conducted and during this period the suspension of employee was absolutely must. Hence the order of suspension cannot be stigmatised as illegal one.

6. It cannot be a matter of dispute that placing the delinquent employee under suspension during the enquiry proceeding is rather a privilege of an employer. However, the order of suspension should be bona fide one. It should not be imposed in the colourable exercise of employer's right. The validity of an order of suspension, therefore, according to the settled position of law, may be challenged on the grounds viz.,

- (1) *Malafide*, or that there was no evidence to slap the suspension.
- (2) If it is passed with non-application of mind,
- (3) It has been issued for collateral purpose.

7. Admittedly, the Party No. 2 was late in attending the duties. He was served with charge-sheet of late attendance and rude behaviour with the superior. The charge-sheet came to be issued on the basis of written report lodged by the Jr. Engineer Mr. Ikhār. The Corporation thought it appropriate to initiate the departmental enquiry. The authority concerned reasonabley thought that continuation of Party No.. 2 in service during the period of enquiry may hamper the enquiry proceeding. It may cause in obstacal or hamper the proceeding. With this *bona fide* object the Party No. 2 appears to have been placed under suspension for a limited period of less than a month. The order of suspension, therefore, does not smell any *mala fide* intention on the part of the authorities or it cannot be said without any evidence. The authority has applied its mind to the facts. The collataral purpose is also absent. So by virtue of the ratio of the verdict of the summit Court in U. P. Rajya Utpadan Mandir Parishad *vs* Sanjiv Ratan reported in 1994 SCC(L & S) 67, I hold that the impugned order of suspension cannot be said to be illegal.

8. It would be essential to go through the clauses of misconduct embodied in the charge-sheet, Clause 1 relates to misconduct of leaving the office without permission, Clause 20 is partaining to habits of impairing the capacity to work and efficiancy, clause 22 speaks for breach of the administrative orders and clause 28 deals with disorderly behaviour with staff on duty.

9. The report of Mr. Ikhār would reveal that on 26th July 1993 Party No. 2 reported to the duty late by one hour and he behaved recalcitrantly with his superior. The very nature of allegation constrains me to opine that clause 1 and clause 20 specified in the charge-sheet would not be attracted. There was no material against the Party No.. 2 to frame charge under clause 1 or clause 20 of the D and A Procedure. *Prima facie* the Clauses 22 and 28 are attracted in the instant case. I, therefore, have no hasitation to hold that the findings of the E. O. with respect to proof of misconduct under clause 1 and clause 20 is totally incorrect and unjustifiable.

10. Mr. Ikhār in his testimony before the Enquiry Officer deposed that when he asked the Party No. 2 put time on his attending duty, he arrogantly uttered that the former must himself put the time whatever he wants. He must take care that the buses should run at appropriate time. He then refused to put the time in muster. The Party No. 2 in his evidence before the E.O. negated all these allegations. According to him, he simply expressed his refusal to put the time in muster since there was no such column. All other allegations levelled by Mr. Ikhār, according to Party No. 2, were concocte with some ulterior motive.

11. Since there is a conflict in between the evidence of both the parties and that remains unfortified by independant and concrete evidence, the evidence of either party cannot be belived and accepted beyond all reasonable doubt. So at this juncture the Court must focus its attention on admitted fact that the Party No. 2 joined the duty late by one hour. It may be presumed that Jr. Engineer Mr. Ikhār being a superior might have asked the Party No. 2 to put a time and there may be some verbal conflict in between the Party No. 2 and Mr. Ikhār, it is but worth mentioning that the Party No. 2 Mr. Vaidhya was working in maintenance team which directly was under the supervision and administration of the Divisional Controller. There was no column of time in the muster roll. In the circumstances Mr. Ikhār got no authority to issue any direction to Mr. Vaidhya for putting time in muster. Had Mr. Ikhār known his own powers and authority, and had he restrained him from issuing any such direction, the further event probably would not have taken place. So it would not be wrong to say that Mr. Ikhār, Jr. Engineer primarily was responsible for the unfortunate episode.

12. Whatever may be the facts, but it is truth that Party No. 2 reported to the duty late by one hour. Party No. 1 as per D. and Procedure is empowered to award punishment for late attendance. However, considering the nature of misconduct, I am of the opinion that the punishment of stoppage of 3 increment with cumulative effect is shockingly disproportionate. At the most withholding one increment without cumulative effect would have been the appropriate punishment with a view to maintain discipline in the employees. I, therefore, conclude that the punishment needs to be substituted. Hence the award as follows :—

Award

(1) The punishment order dated 23rd September 1993 is modified as follows :—

The stoppage of increment for three years with cumulative effect is hereby substituted by stoppage of only one increment and that too without any cumulative effect.

(2) The order of suspension was legal and proper.

(3) The reference is accordingly answered partly in affirmative.

Nagpur,
Dated 17th December 2002.

A. S. SHIVANKAR,
Presiding Officer,
Industrial Tribunal, Nagpur.

Additional Commissioner of Labour,
Nagpur.

OFFICE OF THE ADDITIONAL COMMISSIONER OF LABOUR, NAGPUR

Civil Lines, Nagpur, dated the 11th August 2005

NOTIFICATION

No. ALC/ ADJ/ PUB/ IT/ NAG/9/05.—In pursuance of section 17 of the Industrial Dispute Act, 1947 (XIV of 1947) read with Government Notification, Industry, Energy and Labour Department No. IDA/2002/ 5686/ (2882) Lab-3, dated the 19th August 2003. The Additional Commissioner of Labour, Nagpur hereby publishes the Enclosed Award of the Industrial Court, Nagpur referred for adjudication by the Additional Commissioner of Labour, Nagpur in reference IT/3/04 in the Industrial Dispute between M/s. The President/Secretary, Vidarbha Premier Co.-op. Housing Society, Nagpur. And The President/Secretary, Vidarbha Premier Co-op. Housing Society, Karmachari Union, Nagpur.

BEFORE SMT. V. G. KHARE, B.Sc., LL. B.
PRESIDING OFFICER, INDUSTRIAL TIBUNAL, Nagpur

REFERENCE (IT) No. 3 Of 2004.—Adjudication Between— The President/Secretary, Vidarbha Premier Co-op. Housing Society, Near Gandhi Sagar, Tilak Putala, Mahal, Nagpur—*Party No. 1—And The president/Secretary, Vidarbha Premier Co-op. Housing Society, Karmachari Union, C/o. Vidarbha Premier Co-op. Housing Society, Near Gandhi Sagar, Tilak Putala, Mahal, Nagpur—Party No. 2.*

IN THE MATTER OF REFERENCE UNDER SECTION 12(5)
R/W SEC. 10(2) OF INDUSTRIAL DISPUTES ACT, 1947.

Advocates.— Adv. Dhande for the Party No. 1

None for the Party No. 2

Award

(Passed on this 22nd day of July, 2005)

The Government of Maharashtra, *i.e.* the Additional Commissioner of Labour, Nagpur (Vidarbha Region) has forwarded this reference to this Tribunal under Section 10(2) of the Industrial Disputes Act. Here in this matter the disputes arise between the President/Secretary, Vidarbha Premier Co-op. Housing Society, Near Gandhi Sagar, Tilak Putala, Mahal, Nagpur and President/Secretary, Vidarbha Premier Co-op. Housing Society, Karmachari Union, Nagpur. The Conciliation Officer tried to conciliate the matter but the conciliation failed and therefore, it was decided to forward the matter to this Tribunal and accordingly this reference is made to the Tribunal. Accordingly the order Exh. 2 was passed by the Additional Commissioner of Labour, Nagpur (Vidarbha Region).

2. After receipt of the record of this reference this Tribunal issued the notices to Party No. 1 and 2 Party No. 2 was called upon to put-forth their statement of demands but dispute of repeated chances the Party No. 2 failed to submit their statement of demands Already the Party No. 1 submitted on record pursis on 23rd December 2004 and intimated this Tribunal that despite of service of notice Party No. 2 Union failed to file the statement of claim and therefore, the Party No. 1 does not desire to lead any evidence.

3. As there are no demands put-forth before this Tribunal nothing is thereby to enquire on the alleged disputes between the Party No. 1 and 2. With the result the reference is answered in negative for want of statement of claim. The record of Additional Commissioner of Labour be forwarded to him with the copy of this order.

Nagpur,
Dated : 22nd July 2005.

V. G. KHARE,
Presiding Officer,
Industrial Tribunal, Nagpur.

Additional Commissioner of Labour,
Nagpur.

OFFICE OF THE ADDITIONAL COMMISSIONER OF LABOUR, NAGPUR

Civil Lines, Nagpur, dated the 11th August 2005

NOTIFICATION

No. ALC/ ADJ/ PUB/ IT/ NAG/8/05.—In pursuance of section 17 of the Industrial Dispute Act, 1947 (XIV of 1947) read with Government Notification, Industry, Energy and Labour Department No. IDA/2002/ 5686/ (2882) Lab-3, dated the 19th August 2003. The Additional Commissioner of Labour, Nagpur hereby publishes the Enclosed Award of the Industrial Court, Nagpur referred for adjudication by the Additional Commissioner of Labour, Nagpur in reference IT/13/01 in the Industrial Dispute between M/s. Director, Ajantha Motors Pvt. Ltd., Nagpur and Shri M. G. Jamgade and 4 others elected Representatives.

IN THE INDUSTRIAL COURT MAHARASHTRA (NAGPUR BENCH), NAGPUR

REFERENCE (ICN) No.13 Of 2001.— M/s. Ajantha Motors Pvt. Ltd., Rambag Road, Nagpur through its Director—*Party No. 1*— *Versus*—Shri M. G. Jangade and 4 other elected Labour Representatives C/o. M/s. Ajantha Motors Pvt. Ltd., Rambag Road, Nagpur—*Party No. 2*.

**IN THE MATTER OF REFERENCE UNDER SECTION 73(2) OF
BOMBAY INDUSTRIAL RELATIONS ACT, 1946**

CORAM.— V. G. Khare, B. Sc., LL. B., Member.

Advocates.— Shri S. N. Dandekar for the Party No. 1

Non for the Party No. 2.

Award

(Passed on this 30th day of June, 2005)

The Department of Industries, Energy and Labour, Mantralaya, Mumbai in exercise of its powers conferred by Section 73 of the Bombay Industrial Relations Act, 1946 has been pleased to refer the dispute to this Court between M/s. Ajantha Motors Pvt. Ltd., and its employees for arbitration. The Management is hereinafter referred to as the Party No. 1 and its employees as Party No. 2.

2. On receipt of this reference the notices were duly issued and served on both the parties. Advocate Shri Dandekar Appeared for the Management, i.e. Party No. 1, Nobody from the side of the Party No. 2 gave response to the notice despite of the fact that the notices is served 5 persons for Party No. 2. None from the side of the Party No.. 2 filed the statement of demand.

3. The employees have made demands pertaining to salary and other allowances and other benefits. Whether the demands are justified or not is a question to be decided on merit after hearing the parties considering the evidence. However, here no evidence is adduced by the Party No. 2 in support of the demands. The Party No. 2 does not seem to be interested in prosecuting the matter. In the circumstances the reference is hereby answered in negative for want of prosecution by the Party No. 2.

Nagpur,
Dated : 30th June 2005.

V. G. KHARE,
Member,
Industrial Court, Nagpur.

Additional Commissioner of Labour,
Nagpur.

OFFICE OF THE ADDITIONAL COMMISSIONER OF LABOUR, NAGPUR

Bhonsala Chambers, Civil Lines, Nagpur, dated the 21st November 2005

NOTIFICATION

No. ALC/ ADJ/ PUB/ IT/ NAG/12/05.—In pursuance of section 17 of the Industrial Dispute Act, 1947 (XIV of 1947) read with Government Notification, Industry, Energy and Labour Department No. IDA/2002/ 5686/ (2882) Lab-3, dated the 19th August 2003. The Additional Commissioner of Labour, Nagpur hereby publishes the Enclosed Award of the Industrial Court Nagpur referred for adjudication by the Additional Commissioner of Labour, Nagpur in reference IT/6 of 2002 in the Industrial Dispute between M/s. L. B. Services Limited, Nagpur, And L. B. Services Kamgar Union, Nagpur, who was employed under it.

BEFORE V. G. KHARE, B.Sc., LL. B.

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, AT NAGPUR

REFERENCE (IT) No. 6 Of 2002.— Adjudication between M/s. L. B. Services Limited, Ramkrishna Nagar, Wardha Road, Nagpur —*Party No. 1*— And L. B. Services Kamgar Union, Plot No. 106, Kukdey lay-out, Nagpur-27 through its Secretary—*Party No. 2*.

**IN THE MATTER OF REFERENCE UNDER SECTION 12(5)
OF THE INDUSTRIAL DISPUTES ACT, 1947**

Advocates.— Shri R. E. Mohri for the Party No. 1

Shri R. S. Bhurey for the Party No. 2.

Award

(Delivered on this 18th August 2005)

The Government of Maharashtra having considered the failure report submitted by the Conciliation Officer, in exercise of the powers under Section 12(5) of the Industrial Disputes Act referred the matter to this Tribunal for the purpose of adjudication in respect of the demands raised by the employees of M/s. L. B. Services Limited, nagpur as shown in the schedule attached with the order dated 22nd July 2002 passed by the Commissioner of Labour, Maharashtra State, Mumbai.

2. After receipt of the above reference from the Government of Maharashtra this Tribunal issued the notices to both the parties Exhs. 3 and 7 are the notices duly served on the Party No. 2. However, the Party No. 2 failed to place on record their statement of claim in respect of the demands, *i.e.*, the statement of claim is yet not filed by the Party No. 2. The Party No. 2 appear through their advocates Mr. R. S. Bhurey and F. I. Khan. Exh. 12 is their Vakalatnama. It is presented on 29th March 2003. Despite of that the Party No. 2 failed to place on record the statement in regard to their claim. Thus nothing is on record in the form of demands from the Party No. 2. Hence the reference is answered in negative.

Nagpur,
Dated the 18th August 2005.

V. G. KHARE,
Presiding Officer,
Industrial Court, Nagpur.

Additional Commissioner of Labour,
Nagpur.

OFFICE OF THE ADDITIONAL COMMISSIONER OF LABOUR, NAGPUR

Bhonsala Chambers, Civil Lines, Nagpur, dated the 21st November 2005

NOTIFICATION

No. ALC/ ADJ/ PUB/ IT/ NAG/13/05.—in pursuance of section 17 of the Industrial Dispute Act, 1947 (XIV of 1947) read with Government Notification, Industry, Energy and Labour Department No. IDA/2002/ 5686/ (2882) Lab-3, dated the 19th August 2003. The Additional Commissioner of Labour, Nagpur hereby publishes the Enclosed Award of the Industrial Court Nagpur referred for adjudication by the Additional Commissioner of Labours, Nagpur in reference IT/7 of 2002 in the Industrial Dispute between M/s. Richardson and Cruddas Ltd. M.I.D.C. Nagpur And The Elected Representatives of Employees. Who was employed under it.

IN THE INDUSTRIAL COURT, MAHARASHTRA (NAGPUR-BENCH) NAGPUR

REFERENCE (B.I.R.) No. 7 Of 2002.— Adjudication between M/s. Richardson and Cruddas Ltd., (1972), Nagpur, F-3, MIDC Industrial Area, Hingna Road, Nagpur.—Party No. 1.—And Elected Representatives of Employees og M/s. Richardson and Cruddas Ltd. (1972), Nagpur, F-3, MIDC Industrial Area, Hingna Road, Nagpur.— Party No. 2.

**IN THE MATTER OF REFERENCE UNDER SECTION 73(2)
OF BOMBAY INDUSTRIAL RELATIONS ACT, 1946**

Advocates.— Shri M. R. Patil for the Party No. 1
Shri Kale for the Party No. 2.

Award

(Delivered on this 19th September 2005)

Received the reference from the Government as per the letter of Section Officer dated 2nd July 2002, alongwith the covering letter and the order passed on 7th June 2002 by the Desk Officer, Industries, Energy and Labour Department. On receipt of the aforesaid reference notices were issued to Party No. 1 and Party No. 2. Both the sides appeared Party No. 2 the employees submitted there Statement of Claim as per Exh. 13. The other side, i.e., the employer Party No. 1 was called upon to submit the written statement but they failed to submit their written statement. Thereafter both the parties were directed to adduce evidence to prove the Charter of Demands. However, none of the party entered in the witness box. Though the matter was fixed for evidence from time to time the parties failed to addues evidence. As a result of it, there is nothing on record in support of the Charter of Demands. Mere making demands is itself not sufficient to prove the claim but in fact, to prove the claim oral and documentry evidence is needed and Party No. 2 failed to adduce evidence before this Court in support of their demands. With the result, for want of evidence the reference is answer in negative and I proceed to pass the following award.

Award

- (1) The reference is answered in negative.
- (2) Parties to bear their own cost.

Nagpur,
Dated :

V. G. KHARE,
Member,
Industrial Court, Nagpur.

Additional Commissioner of Labour,
Nagpur.

OFFICE OF THE ADDITIONAL COMMISSIONER OF LABOUR, NAGPUR

Bhonsala Chambers, Civil Lines, Nagpur, dated the 19th December 2005

NOTIFICATION

No. ALC/ ADJ/ PUB/ IT/AKOLA/15/05.—in pursuance of section 17 of the industrial Dispute Act, 1947 (XIV of 1947) read with Government Notification, Industry, Energy and Labour Department No. IDA/2002/ 5686/ (2882) Lab-3, dated the 19th August 2003. The Additional Commissioner of Labour, Nagpur hereby publishes the Enclosed Award of the Industrial Court Akola referred for adjudication by the Additional Commissioner of Labours, Nagpur in reference IT/3/1983 in the Industrial Dispute between M/s. President, Shri Gajanan Maharaj Sansthan, Shegaon, and General Secretary, Shri Gajanan Employees Union Shegaon who was employed under it.

THE IN INDUSTRIAL TRIBUNAL, AT JALGAON
BEFORE SHRI J. P. LIMAYE, MEMBER, INDUSTRIAL TRIBUNAL,
JALGAON, CAMP AT AKOLA

REFERENCE (I.T.) NO. 3 OF 1983 (Old Reference (IT) NO. 1/83).— Shri Gajanan Maharaj Sansthan Shegaon, through its President Tal. Shegaon, Dist. Buldhana—Party No. 1— Versus Shri Gajanan Employees Union through its General Secretary, Shegaon, Tal. Shegaon, Dist. Buldhana— Party No. 2.

CORAM.— Shri J. P. Limaye, Member

Appearances.— Adv. Patil and Deshmukh for the 1st party
Adv. Purandupadhye for the 2nd party

Judgement

(Dated the 20th September 2005)

1. This is reference referred by the Government of Maharashtra for getting adjudication of the dispute between the parties i.e. Employer namely Shri Gajanan Maharaj Sansthan, Shegaon and between its employees represented by the union namely Shri Gajanan Employees Union regarding the dispute mentioned in the Schedule therein under Clause(d) of sub-section (1) of Section 10 read with sub-section (5) of Section 12 of the I.D. Act. 1947. The dispute which is mentioned in the Schedule referred to for the adjudication is regarding the general demands and the service conditions of the employees.

2. Thus after receipt of the reference, notices were issued to the parties and in response to the same, the Second party union has filed its detailed Statement of Claim below Exh. U-2 and after receipt of the copy of the said statement of claim, the management i.e. 1st party has also filed their detailed written statement below Exh. C-1. Here one fact is to be noted that after filing the respective statement of claim and the written statement below Exh. U-2 and C-1, the matter was proceeded further and thereafter an Award was passed accordingly by the predecessor of this Tribunal on 11th July 1985 and after passing the said Award and by getting aggrieved by the same, the 1st party has approached the Hon'ble High Court by filing the Writ Petition No. 2167/85 and the said writ petition was also decided accordingly by the Hon'ble Lordship vide their order dated 8-9th October 1996. After passing of the said judgement and order, the first party employer has failed Spl. Leave petition before the Hon'ble Supreme Court which was allowed and registered

as Civil Appeal Nos. 1780/97 and 1781/97. After hearing the parties, the Hon'ble Lordship of the Supreme Court of India, has passed judgement and order dated 31st January 2002 and referred to the present Reference for adjudication along with the issue of an Industry afresh. Thus after receipt of the judgement and order of the Hon'ble Supreme Court of India, both the parties appeared and by filing an application for amendment dated 3rd August 2002 by the Second party below Exh. U-36, which was allowed subsequently by the predecessor of this Tribunal and accordingly amendment was carried out in the statement of claim and subsequently pleadings of the written statement of the Party No. 1 as per the observation of the Hon'ble Lordships of Supreme Court of India. Thereafter the reference was proceeded further for adjudication and both the rival parties led their oral and documentary evidence in length regarding the issue raised and framed in the present Reference. Thus on the basis of the issues which are framed, both the rival counsels after filing the detailed Statement of claim and Written Statement and supporting documents therein, and after completion of oral evidence, have put forth their rival arguments on record. Here basically, prior to replying the issues framed and the claim made and the dispute which was referred for adjudication by the Government by referring the present reference, which is regarding service conditions and general demands of the workers concerned. Basically now I have to go through the contents and pleadings in the amended statement of claim which is filed by the Second party union below Exh. U-2. In the said statement of claim, the second party union has already narrated the eligibility and entitlement of the reliefs prayed by raising dispute regarding change in service conditions along with the issue of Industry and applicability of the provisions of I.D.Act to the present 1st party. In the amendment statement of claim, it is the contention put forth by the Second party union that the activity of the workers concerned is not out of any philanthropic devotion i.e. the trust is working at Shegaon neither the institution is headed by any Mahant or any Mathadhipati at Shegaon but the business of the trust is promoted in various sides amongst them are maintaining of gardens, opening of amusement parks, running Engineering College, Schools, Mangal Karyalaya, Lodging and Boarding system at Shegaon within the premises of temple by charging various types of charges for lodging and boarding and Mangal Karyalaya from Rs. 50 to Rs. 750 per day and Mangal Karayalaya for more than Rs. 10,000 per day to be used by public for marriage and other ceremonies to be held in Shegaon. It is also submitted that none of the employees in the mandir or other businesses of the trust is working as a crusader but he is working for wages and reward and consideration from date of this employment with the 1st party. It is also submitted that the various units of the 1st party are covered under the provisions of provident fund Act and the provisions of section 38 of the Bombay Shops and Establishments Act are applicable to them and the difference in consideration paid to the member employees of union of the 1st party and the non-member employees in sufficient proof to prove the fact that the business of the 1st party is growing continuously from all sides. The unit and the trust of the 1st party is not like any Asharam or math neither there are Mathadhipati or Mahant of the 1st party under whose control the concerned employees are working. But the employees are working for consideration and the units earning handsome profits out of which higher salary and bonus and the contribution towards Provident Fund of the employees paid by the 1st party from the date of their employment. It is also contended regarding the activities that the 1st party running Engineering College, Schools, and shopping complex within the premises and out side the premises of the mandir and making huge in come and profits from the rent and deposits from the tenants as well as donations from the students who are taking admissions in Engineering Colleges. Its is further stated that the relationship between the 1st party and their employees working at above places are not like of Guru and Shishya but it is relationship of Master and Servant on all counts. It is also stated that all the employees working with the 1st party are getting their consideration, reward and wages from time to time for the services they rendered as an employee of the 1st party. The facility of the Mangal Karyalaya is also available for any body from the public and even

to the outsider who books the Mangal Karyalaya for marriage and other ceremony carring the period of such occupation the premise is not available to anybody coming to the mandir for any purpose and all the activities which have been run by the 1st party through the trust are squarely satisfy the definition of an industry and industrial establishment on all counts. Even the various activities in various departments and institutions of the 1st party are interconnected and they are not severable from the other unit or units of the trust of the 1st party and thus it is an industry for all purpose and on all counts as decided in Bangalore Water Supply and Sewerage Board's case by the larger Bench of the Hon'ble Supreme Court and thus this Court has jurisdiction to decide the present dispute and the present employees concerned in the Reference i.e. Second party are entitled for the reliefs claimed therein. It is also submitted that the medical facility of various types and systems are available to public at large on payment of fees for that count. It is also submitted that other facilities and services rendered by the 1st party to the public at large, for all services rendered by the trust-1st party, every body has to pay to the 1st party and thus the activity of the 1st party is industry and of industrial establishment for all counts. Thus by stating the same it has also given reasoning regarding availability and eligibility regarding the change in service conditions as dispute referred to in the present Reference by the Govt. for adjudication in detailed.

3. In the general demands, the justification which has been given by the Second Party that the change in wage-scales of the employees with effect from 1st January 1980 as per demand No. 1 of the charter of demands. The dearness allowances as per the Maharashtra Government Rules, and the additional increments to those who have completed 3 years of service and thereafter 1 increment for each 3 years of completed service subject to the maximum of five increments. House Rent Allowance at the rate of 10 Percent of the basic wages with effect from 1st January 1980, Fair and festival allowance-one month's pay needs to be given to the employees concerned and the justification for the said reliefs which have been pleaded and contended by the Second Party party accordingly.

4. In reply to the said Statement of Claim and amended Statement of Claim, the party trust has submitted their detailed Written Statement accordingly along with the consequential amendment therein below Exh. C-1 dated 20th February 1984 and the amendment in the said Written Statement which was carried out vide order dated 9th November 2003, passed by the predecessor of this Tribunal accordingly. Basically in the said Written statement, the 1st party has raised an objection regarding legality and propriety of the reference itself as it is the contention of the 1st party that the their conciliation officer i.e. Shri Joshi has no authority to make the conciliation or report which is submitted to the Government as no notification was issued in his name as a conciliation authority, hence the conciliation proceedings which was started as per the demand of Second party union before the said Shri Joshi is without jurisdiction and any other further proceedings which have been arrived out of the said act and the report submitted by him also without jurisdiction. Thus the reference which is referred on the basis of the said conciliation report which put forth, itself is without jurisdiction and consequentially this Court has no jurisdiction to decide the same.

5. It is further submitted that recently the amendment in the provisions of Industrial Disputes Act, 1947, regarding definition of the Industry is made and from the said definition definition of an Industry, the public religious trust are excluded. It is further submitted that thus, it is the contention of the 1st party is a religious just serving the Devotees of Shrine of Shri Gajanan maharaj and its activities and finance are applied to that sole cause and as such ceases to be an Industry within the meaning of Section 2(j) of the I. D. Act. 1947. It is further stated that following principles laid down by the Hon'ble Supreme Court of India in Bharat Iron Works V/s. Bhagubhai, reported in 1076 Lab. I., C., 4 that the definition of an Industry has to be

interpreted as per concept of an Industry as is laid down in the new amending Act and in view of the said position, the First party is not an Industry, hence the Reference itself is without jurisdiction and has to be answered accordingly.

6. It is further stated that basically the said Shri Joshi has no authority to proceed with the conciliation proceedings and accordingly as per the amendment of definition of an Industry, the 1st party trust do not come under the purview of definition of an Industry under Sec. 2(j) of the I.D.Act. Thus it has been categorically denied that the trust is not working with philanthropic devotion at Shegaon and it is also denied that the same is not headed by any Mahant or Mathadhipati at Shegaon. As a matter of fact, Shri Gajanan Maharaj has been called by his devotees as "Guru Gajanan" and all the devotees, sevaks at Sansthan are performing pooja, archanas etc. as if they are serving their Guru Shri Gajanan Maharaj. Hence, it is denied that trust is involved in any business. It is also submitted that the maintainance of garden or a park is part of the cultural activity with an intention to maintain ecological balance and to develop greenery etc. to help the meditation, dhyan-sadhana etc. and the trust namely Shri Gajanan Maharaj Sansthan is not running any Engineering College. It only runs the deal and dumb school as well as school for mentally retarded, physically handicapped boys and girls. It is also submitted that the school is charitable institution which run with an object to develop the mentally retarded, physically handicapped children free of cost. It is also denied that the 1st party is running Mangal Karyalaya, Lodging and Boarding system at Shegaon. It is also denied that various types of charges are charged by the 1st party trust. It is further stated that the Mangal Karyalaya and Bhakta Niwas has been used by the devotees of Shri Gajanan Maharaj for their stay and for the maintenance of the Bhakta Niwas and Mangal Karyalaya etc. a nominal payment are made by the devotees. It is also denied that there are no devotees working in the trust as a Crusader. It is further submitted that large number of devotees of Shri Gajanan Maharaj who consider the Maharaj as their Guru devote their time and life for the seva of Shri Gajanan Maharaj. Some of the devotees have left their fabulous job, businesses, properties and have settled down in Shegaon just to perform seva for their Guru to achieve the spiritual grace. It is also denied by the 1st party that the first party is involved in any kind of activities like business or trade. It is further submitted that the fact is not disputed by the 1st party that there are various departments with the 1st party trust and in all the departments there are sevaks and they are called Sevadharis or Manseva and they are devoting their entire life for their Guru Shri Gajanan Maharaj and the trust as a gesture provides them food and clothing free of cost and gives them honourarium and it is denied that the various units of the 1st party are covered under the Provident Fund Act as it is a fact on record that the Hon'ble High Court has stayed the order of Provident Fund Commissioner which has been challenged in a writ petition and the said writ petition is till pending and also denied regarding applicability of provisions of Bombay Shops and Establishments Act to the 1st party trust. Thus the 1st party is not carrying out any commercial activity under the said Act. It is further stated that there are few employees engaged by the 1st party trust to manage the affairs of the trust in different departments but the majority of the voluntary workers are working to perform the seva of their Guru Shri Gajanan Maharaj at Shegaon but it is denied that the business of the 1st party is growing, on the contrary, the charitable activities of the 1st party are flourishing because of the super natural powers of Shri Gajanan Maharaj as explained in the Granth namely "Shri Gajanan Vijay Granth" and in the said granth, several examples of super natural powers of Shri Gajanan Maharaj has been explained in total 21 chapters by another Sant namely Shri Das Ganu Maharaj and the said granth has been read over by the devotees before the old seating place of Shri Gajanan Maharaj at Shegaon. Thus it has been denied that there is sufficient proof to prove that the 1st party running any kind of

business or trade and same is growing continuously but it is a matter of fact that no business activity or trade is carried out and the 1st party trust is denied that some of the units of the 1st party are not like Ashram or Math. As a matter of fact, Samadhi of Shri Gajanan Maharaj itself is Math and Ashram for the devotees and denied that there is no Mathadhipati or Mahant. As a matter of fact, Shri Gajanan Maharaj himself is Mathadhipati, the head of the trust under whose control the entire trust is working. Thus it is further submitted that during the life time of Shri Gajanan Maharaj the trust was established and as per the direction of Shri Gajanan Maharaj, the head of the trust has been appointed from the Patil family only i.e. from the family of Hari S/o. Kukaji Patil who was the param bhakta of Shri Gajanan Maharaj and performed seva of Shri Gajanan Maharaj through-out the life time of Shri Gajanan Maharaj. Thus the said trust is headed by the Patil family with the spiritual grace of Shri Gajanan Maharaj and under the control of the said trust the devotees are working and performing their seva. Thousands of devotees gather in the morning and evening to perform the Aarti of Shri Gajanan Maharaj i.e. their Guru Sacchidanand Swami. The entire activities are carried out under the control and spiritual grace, power of Shri Gajanan Maharaj. Thus it has been denied that the units of the 1st party are earning handsome profit, there is no profit at all. It is denied that the 1st party is distributing bonus etc. to its employees and also denied that the provident fund has been paid by the 1st party.

7. Regarding activities of Engineering College, same has been denied that the same is running by 1st party. It also denied that the 1st party is running shopping complex within the temple premises and outside the temple premises and also denied that 1st party is making huge income from the rent. It is also denied that the donations are accepted from the students. The Engineering college has been run by the different trust namely Gajanan Shikshan Sanstha. It has been denied that the relationship between the 1st party and its employee is of Master and Servant. Thus in limine, it is the contention of the 1st party that they have no relation with the activities of the said Engineering College run by another trust namely Gajanan Shikshan Sanstha and its employees employed therein and thus considering the activities which are carried out in the said 1st party trust are carried out with the help of devotees who are rendering services to their Guru to achieve spiritual grace. Thus it is the categorically denied that all other activities run by the 1st party trust squarely satisfying the definition of an Industry and thus it is the contention of the 1st party that it do not come under the purview of definition of an Industry. Thus the contention which has been raised by the Second Party Union regarding the applicability of the said provisions are illegal, erroneous and bad-in-law and same has to be proved by the Second Party beyond doubt. It is also categorically denied by the 1st party that the first party is an industry for all the purposes on all counts as decided in a land-mark judgement of Bangalore Water Supply and Sewerage Board V/s. S. Rajappa decided by the Hon'ble Lordships of Hon'ble Supreme Court of India. But it is the contention of the 1st party that there are certain exceptions carved out by the Hon'ble Supreme Court of India with regard to the charitable activities carried out by the temples, maths and the present 1st party falls in those exceptions and hence the matter has been remanded to this Court by judgement dated 31st January 2002 passed in Civil Appeal No. 1780 and 1781 of 1997 and accordingly the Second party has amended the pleadings to circumvent the above said judgement and the attempt of the Second party is fantastic. It is denied that this Tribunal has jurisdiction to decide the claim of the Second party union and the relationship of employer and employee under the provisions of MRTU and PULP Act. Thus this Tribunal has no jurisdiction to entertain the present Reference and thus the Hon'ble Supreme Court has already directed to this Court to decide the issue in Reference. Unless the same is decided, present proceedings can not be continued.

8. It is also denied that the 1st party is charging fees for medical facilities which are provided to the public at large but in fact the said medical facilities are provided free of cost. Thus in limine, it is the contention of the 1st party that the 1st party trust is based on philanthropic devotion for the charitable foundation and the institution is headed by the person from Patil family from the life time of Shri Gajanan Maharaj and the said person whole heartedly dedicated himself for the mission with passion and the entire Patil family is devoted to the cause of Shri Gajanan Maharaj and is attracting other into the institution. Thus there are ample of devotees attracted to Shegaon not for the wages, but for sharing the cause and its fulfillment. Thus, the 1st party is not an Industry as defined under the provisions of I.D. Act of Sec. 2(j) of the I.D. Act. Hence the present dispute reference has no merits and same is liable to be dismissed on this count alone.

9. Thus regarding demand No. 1-A, it is the contention of the 1st party that this demand covers five categories of employees like (1) Manager, (2) Asstt. Manager, Accountant, Cashier, Senior Clerk, Departmental Heads, Overseers (3) Jr. Clerks, Pujaries, Drivers, Wiremen, Mahut, Librarian (4) Sutar, Tailor, Painter, Welder, Mali, Cook, Conductors and Cleaners (5) Peons, Chaprasi, Choukidars, Casual Workers, Sweepers and Akhand Veena. The Manager and Assistant Managers who are being employed under the managerial and supervisory capacities, they are out of sweep of the Industrial Disputes, hence they can not claim any benefits which have been claimed by other categories of employees in the present reference. It is also submitted that the pay-scale which has been prayed by the employees concerned i.e. for categories 2,3,4, and 5 are disproportionate to the qualifications of the existing employees of those categories. As a matter of fact, in proportion, the pay scales given in the local area of Shegaon in various institutions for their employees having likewise qualifications are much less than the pay-scales which are given by the 1st party trust to its employees. It is also submitted that even the Municipality or Zilla Parishad employees in the area at Shegaon are having the pay-scales much less than the pay demands are made against the 1st party trust.

10. In respect of demand No. 1-B, it is submitted that in the five categories listed under this demand, total 20 employees are employed, out of them 2 are M.B.B.S., 4 are D.H.B.S., 1 is D.M.P., 5 are matriculates, 6 are having education between VIIth to 9th standards, 2 are Primary VI standard passed. Doctors are given payment according to their experience and although none of others are technically qualified, they are given much more than what their qualifications require. It is also submitted that all the employees are paid, apart from their monthly pay at the time of Diwali an ex gratia payment equivalent to two months pay to cover D.A., Bonus and extra work at the time of ceremonies. Yearly each of them are given cloth worth Rs. 150. It is also submitted that all the employees and their family members are given free medical aid and grains by the Trust at the subsidised rates. It is also submitted that at the time of marriage ceremony of any of the wards of the employees, free lighting, loud-speaker, utensils, transport facilities are provided by the trust. On duty each of the employee is given free tea twice a day. Peons, drivers and conductors are provided with two dresses every day and extra honourarium and the cloth also given to them who participate in yearly eyes camp organised by the trust. It is also submitted that apart from the pay granted by the trust, each employee is taken care of and their essential needs are also taken care of by providing the aforesaid facilities and extra payments. The Second party union has purposely suppressed these facts from this Tribunal.

11. In respect demand No. 2 it is submitted by the 1st party trust that the 1st party is not in a position to pay any D.A. at the rate of Government pays to its employees and the trust can not be compared with the Government. It is submitted that the 1st party has a limited source i.e. Devotees and no other source and the present pay given by the 1st party trust is a total pay pocket inclusive of all allowances and the 1st party is not in a position to grant any more.

12. In respect of demand No. 3, it is submitted that the yearly increments are already granted to the employees and the demand of additional increments bi-yearly or tri-yearly is fantastic and the 1st party trust is not in a position to accept the demand.

13. In respect of demand No. 4, it is submitted by the 1st party trust that all the employees are local residents of Shegaon or places near Shegaon and have their own houses, hence they are not required to pay any rent on account of any accommodation and therefore no house rent can be claimed by them.

14. In respect of demand No. 5, it is submitted that the employees are the Bhakt as of the Shrine and they are taken part in the fairs and festivals of the Shrine as a part of their faith along with other devotees and therefore the faith can not be encashed in the form of demand. It is admitted that there are devotees, who regularly come at the time fairs and festivals as Sevadharis and given voluntary service to the Shrine as well as to the devotees attending to it and the employees are given employment in the institution because they have faith in the Shrine and not as a part of trade or commercial activity of the trust or because they have got any commanding qualifications for any skillful jobs. It is also submitted that commercialisation of faith seems to be the aim of the Second Party Union.

15. In respect of demand No. 6, it is submitted by the 1st party trust that the 1st party cannot be compared with the Government machinery, administration etc. and can not be asked to give all kinds of leave that are given by the Government to its employee. The employees are presently given the leave facilities looking to the circumstances and nature of duties that are required to be attended to the shrine.

16. In respect of demand No. 7, it is submitted by the 1st party trust that the service rules were already prepared as demanded by the Union and the service rules as approved by the Trust were presented and registered before the Conciliator and brought into effect from 15th April 1982 and the Second party union has accepted those Service Rules and consequently withdraw the demand from the conciliation and hence the report under Section 12(4) is given for 6 demands hence the said demand about the Service-Rules cannot be agitated and is a closed chapter. It is also submitted that the 1st party trust is in profit. It is also denied that the 1st party is not going to establish any Medical College, nor it is going to bear the expenditure and it is also not correct that the 1st party has already started an Engineering College at Shegaon from its funds and Engineering College started is entirely different and has no relation with the shrine of the Trust as the devotees are contributing separately to the funds of the Engineering College and hence the allegations of the second party in this respect are baseless, verbose and mischievous.

17. It is also submitted by the 1st party trust that the 1st party is a religious trust devoted to the cause of service to the devotees of Shri, Gajanan Maharaj and for that purpose 1st party is carrying out the activities i.e. Anna-dan, free bus service, free lockers, free medical services, utensils are provided free of charge, free library, free netradan shibir etc. from its surplus funds. Thus the 1st party has categorically denied regarding the legality and propriety of the Reference and Demands which have been raised by the Second Party Union regarding change in service-conditions and wage-scales and conditions regarding applicability of the provisions of Section 2(j) of the I. D. Act taking into consideration the ratio and case-law and judgement passed by the Hon'ble Supreme Court of India in Bangalore Water Supply and Sewerage Board V/s A. Rajappa. Thus it is categorical submissions put forth by the 1st party in the amended pleadings that as per the directions of the Hon'ble S.C. for which present Reference is remanded for fresh hearing, so considering the same, it is their contention that it reflects from the facts on record that the present reference itself is not tenable and if the said ratio is considered, then the 1st party trust do not come under the purview of definition of an Industry under Section 2(j) of the I.D. Act even after considering the case law and judgment passed by the Hon'ble S.C. in Bangalore Water Supply and Sewerage Board V/s. A Rajappa case and prayed that the Reference needs to be answered in the negative.

18. Thus both the parties have put forth their justification and explanation and after amending the Statement of Claim and Written Statement considering the directions issued by the Hon'ble S.C. In the judgement passed in Civil Appeal No. 1780/97 and 1981/97, dated 31st January 2002 and thereafter they have also led oral and documentary evidence in support of their said amended pleadings and also filed huge set of documents on record. Thus while deciding the present reference which has been sent for adjudication by the Appropriate Authority and by remanding the Reference for fresh hearing by the Hon'ble Supreme Court, the issues which have been framed by the Ld. Predecessor of this Tribunal below Exh. O-1, dated 24th June 2003 are as under :—

Issues

1. Whether the Second party Shri Gajanan Employees Union proves that the First party Shri Gajanan Maharaj Sanstha, Shegaon , is an Industry as defined under Sec. 2(j) of the I.D. Act, 1947 ?
2. Whether the First party Shri Gajanan Maharaj Sanstha, Shegaon, proves that it is not an Industry as defined under I. D. Act, 1947 ?
3. Whether the Second Party, Shri Gajanan Employees Union proves that its members are entitled to the benefits as per its demands under Reference ?
4. What Order ?

May findings to the above issues are as under :—

- (1) In the affirmative.
- (2) In the negative.
- (3) As per the order.
- (4) As per the final order for the reasons recorded herein below :—

Reasons

19. While considering the demands in the present reference which have been referred to for adjudication by the Appropriate Authority *vide* their order dated 14th December 1983 and after referring the said Reference, in reflects from the facts on record that both the rival parties have led huge oral and documentary evidence and thereafter hearing the oral submissions of the rival counsels the said Reference was decided by the Ld. predecessor of this Tribunal *vide* Award dated 11th July 1985 and after passing of the said Award the aggrieved party i.e. 1st party trust has approached the Hon'ble Lordships of High Court Bombay bench at Nagpur in Writ Petition No. 2167/85 and the said writ petition was also decided on 8-9th October 96 accordingly, after hearing both the parties in length and after passing the said judgement by the Hon'ble Lordship of High Court, Bombay bench at Nagpur, aggrieved party i.e. 1st party trust has also filed Spl. Leave Petition before the Hon'ble Supreme Court of India, after admissioned recorded as Civil Appeal Nos. 1780, 1781/91 and after hearing the parties, the Hon'ble Lordships of Supereme Court has passed their judgement and order dated 31st January 2002 by remanding the present Reference for fresh adjudication along with all other issues but specific directions are given to decide the issue of an Industry, taking into consideration the observations made by the Hon'ble Supreme Court in the matter of Bangalore Water Supply and Severage Board V/s. A. Rajappa reported in 1978 II SCC, page 213 and directions have been given by quotting the said para that the tests need to be applied prior to coming to any conclusion whether the 1st party trust comes under the purview of definition of an Industry under Sec. 2(j) of the I.D. Act or not. The relevant para read as under :—

“ If a philanthropic devotion is the basis for the charitable foundation or establishment, the institution is headed by one who whole heartedly dedicates himself for the mission and pursues it with passion, attracts others into the institution, nor for wages

but for sharing in the cause and its fulfilment, then the undertaking is not 'industrial'. Not that the presence of charitable impulse extricates the institution from the definition in Section 2(j) but that there is no economic relationship such as 'found' in trade or business between the head who employs and the others who emotively flock to render service. In one sense, there are no employers and employees but crusaders all. In another sense, there is no wage basis for the employment but voluntary participation in the production, inspired by lofty ideals and unmindful of remuneration, services conditions and the like. Supposing there is an Ashram or Order with a guru or other head. Let us further assume that there is a band of disciples, devotees or priestly subordinates in the Order, gathered together for prayers, ascetic practices, bhajans, meditation and worship. Supposing further, that outsiders are also invited daily or occasionally, to share in the spiritual proceedings. And, let us assume that all the inmates of the Ashram and members of the order, invites, guests and other outside participants are fed accommodated and looked after by the institution. In such a case, as often happens, the cooking and the cleaning, the bedmaking and service, may often be done, at least substantially by the Ashramites themselves. They may chant in spiritual ecstasy even as material goods and services are made and served. They may affectionately look after the guests, and all this they may do not for wages but for the chance to propitiate the master, work selflessly and acquire spiritual grace. It may well be that they may have surrendered their lucrative employment to come into the holy institution. It may also be that they take some small pocket money from the denotations or taking of the institution. Nay more, there may be a few scavengers and servants, a part-time auditor or accountant employed on wages. If the substantial number of participants in making available goods and services, if the substantive nature of the work, as distinguished from trivial items, is rendered by voluntary wageless sishyas, it is impossible to designate the institution as an industry notwithstanding a marginal few who are employed on a regular basis for hire. The reason is that in the crucial, substantial and substantive aspects of institutional life the nature of the relations between the participants is non-industrial. Perhaps, when Mahatma Gandhi lived in Sabarmati, Aurobindo had his hallowed silence in Pondicherry, the inmates belonged to this chastened brand. Even now, in many foundations, centres, monasteries, holy orders and Ashrams in the East and in the West, spiritual fascination pulls men and women into the precinct and they work tirelessly for the Maharishi or Yogi or Swamiji and are not wageearners in any sense of the term. Such people are not workmen and such institutions are not industries despite some menials and some professionals in a vast complex being hired. We much look at the predominate character of the institution and the nature of the relation resulting in the production of goods and services. Stray wage earning employees do not shape the soul of an institution into an industry."

20. Now I have to say that the reference which has been referred to for the adjudication by the Appropriate Authority on whose behalf the demands were raised by the union named in the Reference and was participating in conciliation proceedings. I say that if we read and penised the contents of the said para, the said tests which have been categorised by the Hon'ble Lordships to consider the issue regarding whether the 1st Party comes under the purview of definition of an Industry or not. In limine after perusing the facts on record and regarding the nature of activities of the 1st party trust i.e. Bhakta Niwas, Mangal Karyalaya, School for mentally retarded persons, School for deaf and dumb and for handicapped persons, Engineering College etc. and etc. which seems to be run by the 1st party trust itself and the said fact is nowhere disputed by the 1st party. Only the contention raised that they are not running Engineering College and if we go through the contents of the documents which are thereon record regarding rent receipts and activities which have been narrated in the oral evidence led by both the parties which come forth on record

even prior to any reference, which is remanded back for fresh hearing and even after remanding the same, it reflects that the workers concerned and their services are utilised either by the trust and even by the said Engineering College and regarding the documents which are there on record filed along with list Exh. U-39, U-45, U-52, U-58, U-62, U-68 and Exh. C-68, so if we perused the contents of the above said para and the tests which have been needs to be applied while coming to the conclusion regarding the issue of an Industry as per the directions of the Hon'ble Lordships S. C. it cannot be said that all the said tests which have been laid down by the Hon'ble Apex Court are applicable in the present Reference as if we persued the entire oral evidence led by both the parties below Exh. U-10, U-16, U-17, U-18, U-19, U/W-1, 2 and 3, C-13, C-27, C/W-1, it reflects that workers concerned though they are designated as Mansevi, or Sevadhari, it has been categorically came on record that they are working for their bread and butter and theyare bread earners and not devotees.

21. It also reflects that the 1st party at any time has proved that the services which have been rendered by the workers concerned in the present Reference and they are not an employees but crusaders and also failed to prove that the workers concerned are not interested in earning the wages but they are voluntarily participated in the production and inspired by lofty ideals and unmindfull of remuneration, service conditions and the like and if the said tests are not applicable in the present case, then it cannot be said that the 1st party trust do not come under the purview of definition of an Industry under Sec. 2(j) of the I.D. Act. I have also to say that all the tests which have been stated in the said para, nowhere it has been proved that the same are applicable in the present case i.e. Reference and the issues involved therein. Thus it cantnot be said that the workers who have raised the demands through the Second party union are only the strangers who are earning employees but the 1st party trust has failed to prove itself that all the activities which have been carried out in the name of trust are totally spiritual activities as per the order of their Guru Shri Gajanan Maharaj as it has been categorically tried to convinence in the pleadings amended written statement by the 1st party. It we perused the documents which are placed on record alongwith list Exh. U-39, U-41, U-45, U-52, U-54, U-58, U-62, U-68, and C-68. Thus after perusing the above said documents enlisted therein, it cannot be said that the present trust i.e. 1st party in the present reference comes under the purview of tests which have been narrated by the Hon'ble Lordships in its para which has been quotted in the judgement passed in Civil Appeal Nos. 1780, 1781/97 from the landmark Judgement i.e. Bangalore Water Supply and Sewerage Board V/s. A. Rajappa's case and accordingly directed to look into the matter whether the said tests are applicable in the present Reference in the case of 1st party trust or not and after perusing all the contents therein and the tacts which are there on record i.e. oral and documentary evidence and the written synopsis of the arguments of the parties filed below Exh. 57, 58 and 55 of the parties and citations and case laws which have been referred to by the rival parties i.e. :—

Citations and case laws referred to by Second party Union :

1. *1999 ILL.J page 1109 (Hon'ble S.C.).*—Coir Board, Ernakulam, Kerala State and Anr. V/s. Indira Devi P.S. and Others.
2. *Vol. 50, FJR page 222 (Hon'ble Andra Pradesh High Court).*—Andra Pradesh State Electricity Board Visakhapatnam V/s. Labour Officer, Srikakulam and Others.
3. *1998(1) Bom. L.C.318 (SC).*—All India Radio V/s. Shri Santosh Kumar and Anr.
4. *1999 II LLJ page 304 (Hon'ble Himachal Pradesh H.C.).*—Jagbir Singh and Ors. V/S. State H.P. and Otr. With Rakesh Kumar and Ors. And Commissioner-cum-Deputy Commissioner, Baba Balak Nath Temple Trust and Ors.

5. 1999 II CLR page No. 79 (Hon'ble Calcutta High Court).—Workmen represented by the Ananda Bazar Group of Publications Employees Union V/s. Ananda Bazar Patrika Limited and Ors.

*** Crotations and case-laws referred to by 1st party Trust :—**

1. Civil Appeal No. 2727/98, 5393/98 (Hon'ble S.C.).—Union of India through the Secretary, Ministry of Labour V/s. Shree Gajanan Maharaj Sansthan Shegaon and Ors.

2. Civil Appeal No. 2727 of 1998, (Hon'ble S.C.).—Union of India V/s. Shree Gajanan Maharaj Sansthan.

3. 2005 (II) CLR-534 (Hon'ble S.C.).—State of U.P. V/s. Jai Bir Singh.

4. 1975 LIC 732 (Hon'ble Bombay High Court).—The India Sailors Home Society V/s. R.D. Tirpude and Ors.

5. 1978 Lab. I.C. NOC 102 (Hon'ble A.P. High Court).—Tirumala Tirupati Devasthanam V/s. Government of A.P. and Ors.

6. 1978 Lab.I.C.373 (Hon'ble Bombay High Court).—The Poona Christian Medical asso. V/s. Marthabai Londhe and another.

7. 1979 LLJ(I) 398 (Hon'ble Kerala High Court).—Thirumullapalli Devaswom V/s. Commissioner for Workmen Compensation.

8. 1989 (I)CLR page 286 (Hon'ble Kerala High Court).—Kesava Bhat V/s. Ram Ambalam Trust.

9. 1993 I CLR page 103 (Hon'ble Gujrath High Court).—Manager, Shri Panchasara Jain Derasar, Patan V/s. M. G. Baloch.

10. 1993 I CLR 1005 (Hon'ble Bombay High Court).—Suhas B. Gadre V/s. V. V. Savjee and Ors.

11. 2002 (9) Supreme Court Cases 652.—Som Vihar Apartment Owners Hou. Main Society Ltd. V/s. Workmen C/o. Indian Engg. and Genl. Mazdoor.

12. 2001 (9) Supreme Court Cases 713.—State of Gujrath and Ors. V/s. Pratamsingh N. Parmar.

13. 2001 (7) Supreme Court Cases 630.—Bharat Bhawan Trust V/s. Bharat Bhawan Artists Asso. and Ors.

Considering all the case-laws and citations along with all the facts which are there on record, I conclude that the said 1st party trust do not come under the purviews of the said tests which have been narrated in the above said paragraph of the case of Bangalore Water Supply and Sewerage Board V/s. A. Rajappa.

22. Hence apart from this conclusion, prior to concluding that the 1st party trust comes under the purview of definition of an Industry as defined under Sec. 2(j) of the I.D. Act. I say that the 1st party cannot take the shelter of an amended definition of the I.D. Act, 1947 as the same is yet to be effected and for the said purpose the 1st party trust has also approached the before the Hon'ble Lordship by filing Writ Petition accordingly for giving directions to implement and to give effect to the amendment of the said definition of an Industry and after the judgement and order of the Hon'ble Lordships of Bombay High Court, Bench at Nagpur in Writ Petition No. 2727/98 the First party has filed Writ Petition/Appeal before the Hon'ble Lordship of Supreme Court and the Hon'ble Lordships of Supreme Court has categorically concluded in their findings accordingly that no such writ of mandamus could be issued to the Executive directing them to give the effect to the amended act by stating specific limitation and the Hon'ble Lordships has also concluded that it is totally discretionary powers entrusted to the parliament and no such mandamus can be issued, hence it become crystal clear that the amended definition which is likely to take effect is not yet taken any effect accordingly, hence the old/previous definition which has been considered by the Hon'ble Lordships while deciding the case of Bangalore Water Supply and Sewerage Board V/s. A. Rajappa.

Supply and Sewerage Board is still in existence and considering the activities of the 1st party trust, if we perused and read between the lines the documents which are there on record and the oral evidence, it reflects that the 1st party trust categorically comes under the purview of the said definition i.e. of an Industry under Sec. 2(j) of the I.D. Act, 1947. Hence, on this count, it cannot be said that as per the contention of the 1st party trust that the present Reference is not tenable and this Tribunal has no jurisdiction to try and decide the same.

23. Now after deciding the issue of an Industry accordingly, I have to deal with other issue i.e. general demands which have been raised by the Second party Union and the reference which has been referred to accordingly for adjudication of the said demands. Prior to coming to any conclusion whether the demands which have been raised are justifiable or not and whether the 1st party trust is having the capacity to shoulder the burden of the said demands or not. It is a fact on record which has been put forth by the rival parties and also it has been categorically contended in the judgement and order passed by the Hon'ble Lordship of Supreme Court of India that the award which has been passed by the predecessor of this Tribunal dated 11th July 1985 has been already implemented by the 1st party trust after affirming the said award by the Hon'ble Lordships of Hon'ble Bombay High Court Bench at Nagpur. While perusing the contents of the judgement and order passed by the Hon'ble S.C. it reflects that the Hon'ble Lordship has not quashed and set aside the Award and the order of the Hon'ble High Court regarding the facts on record but the same has been quashed and set aside taking into consideration the legal issue i.e. The definition of an Industry and the tests in the para which is quoted therein from the case of Bangalore Water Supply and Sewerage Board V/s. A. Rajappa. It is also a fact on record that the Award which has been passed by the Id. Predecessor of this Tribunal dated 11th July 1985 has been already implemented by the 1st party Trust in toto, hence taking into consideration the contents therein, I do not want to defer from the findings which have been concluded by the Id. Predecessor of this Tribunal while passing the Award dated 11th July 1985 in Ref. (IT) No. 1/83 but apart from that as the reference has been remanded to this Tribunal for fresh adjudication along with the issue of an Industry. I have also to deal with the present Reference and the demands which have been raised by the second Party Union whether they are eligible and entitled for the same or not and whether the 1st party is having, capacity to shoulder the burden of the same or not. After perusing the entire oral and documentary evidence on record and the direction issued by the Hon'ble Lordship Hon'ble S.C. the status as to the emoluments are still continue to the employees concerned as it has came on record and an admitted position that the Award which was in question before the Hon'ble High Court and the Hon'ble Supreme Court has already given effected by the 1st party trust and the same is continued till the date. As per the direction, I have decided the issue of an Industry which is crux of the issues involved/raised in the present Reference and the same has been decided accordingly as above. Now regarding whether the capacity of pay or not is not question before me, but I say that as the Award which has been passed by my Id. Predecessor on 11th July 1985 is already effected in toto, hence I do not want to defer from the same as the predecessor of this Tribunal has discussed in length regarding the eligibility and entitlement of the employees concerned and whether they are eligible and entitled for the said benefit which the Second Party Union by raising the demands prayed accordingly. Hence, for the reason stated above, I say that as the 1st party trust is continued in paying all the benefits arrived out of the impugned Award passed by the Id. Predecessor of this Tribunal dated 11th July 1985, same needs to be continued further accordingly as directed by the predecessor in the said Award which is already implemented by the 1st party trust. Hence, for the reasons stated, I say that the Reference which referred to for

adjudication and the demands raised therein taking into consideration the issue of an Industry, and as already effect has been given as per the said Award dated 11th July 1985 on and from 1st January 1984 also needs no change, and hence for the reasons, I pass the following award :—

Award

1. It is hereby declared that the 1st party trust comes under the purview of definition of an Industry under Sec. 2(j) of the I. D. Act, 1947.
2. The 1st party management is hereby directed to continue to give all the monetory and consequential benefits which they have already effected and granted to the workers concerned in the Reference as per the Award passed in ref. (IT) No. 1/83, dated 11th July 1985 and the operative part of the Award dated 11th July 1985 be also treated as part and parcel of the present Award.
3. No order as to costs.

Hence the Award.

J. P. LIMAYE,

Member,

Industrial Tribunal, Jalgaon,

Camp at Akola.

Dated 20th September 2005.

Additional Commissioner of Labour,
Nagpur.

OFFICE OF THE ADDITIONAL COMMISSIONER OF LABOUR, NAGPUR

Bhonsala Chambers Civil Lines, Nagpur, dated the 27th February 2006

NOTIFICATION

No. ALC./ADJ./PUB./ IT/ NAG/ 1 /06.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947) read with Government Notification Industry, Energy and Labour Department No. IDA-2002/5686 / (2882) Lab-3, dated 19th August 2003. The Additional Commissioner of Labour, Nagpur hereby publishes the enclosed Award of the— Industrial Court-NAGPUR referred for adjudication by the Additional Commissioner of Labour, Nagpur in reference- IT/ 1 of 2000 in the Industrial Dispute between M/s. Maharashtra State Co-op. Bank Ltd., Nagpur and one other and Maharashtra State Co-op. Bank Employees Union, Nagpur. Who was employed under it.

IN THE INDUSTRIAL COURT MAHARASHTRA (NAGPUR BENCH), NAGPUR

REFERENCE (ICN) No. 1 OF 2000.—Maharashtra State Co-operative Bank Employees union, Tilak Putala, Mahal, Nagpur through its General Secretary—*Applicant*—Versus — (1) Maharashtra State Co-operative Bank Limited, Tilak Putala. Mahal, Nagpur through its Dy. General Manager. (2) Maharashtra State Co-operative Bank Limited, Maharashtra Chamber of Commerce Lane, Fort, Mumbai through its Managing Director.—*Non-Applicant*

IN THE MATTER OF REFERENCE U/S 73-A And 87
BOMBAY INDUSTRIAL RELATIONS ACT, 46

CORAM.— V.G. Khare, B.Sc., LL.B., Member.

Advocates.— Shri P.C. Marpakwar for the complainant.
Shri S. W. Ghate for the respondents.

Award

(Delivered on this 21st day of November, 2005)

In nut shell, the facts of the case are as under:

The applicant union moved this court with a reference under Section 73-A read with Section 87 of the Bombay Industrial Relations Act, 1946. The contention of applicant union is that they moved for the conciliation but the conciliation failed. The Conciliator accordingly issued certificate and according to the certificate liberty is given to the applicant-union to make reference in regard to the claim/demands of the union for the members of the union.

2. The contention of the applicant union is that there is a staffing pattern of the employees and it is finalized in the year 1994 and as per that staffing pattern strength of employees in Vidarbha region was fixed to 387. That staffing pattern was in force till the year 1997. The respondent is having regional office at Nagpur and it controls the functions of the branches which are within the Vidarbha region. For the purpose of carrying on business of the banking the respondent established branches at various places. The work increased despite of that number of employees remained as it is. In proportionate to the work load, in fact, the numbers of employees ought to have increased and the promotional post they ought to have been increased by the respondent. Due to the inaction on the part of the respondent increase the post it adversely affect the efficiency of the employees. Therefore, the union submitted notice on 25th August 1999 and brought to the notice of the respondents the change intimating the staffing pattern for the entire Vidarbha region. Annexure-I is that notice.

3. The contention of applicant is that despite of the notices the management failed to discuss the issue with the union. Therefore, the union was compelled to submit notice in Form "N" on 8th September 1999. The Management appeared before the conciliation Officer from time to time but failed to supply the reply. All the efforts before the Conciliator turned futile and thereafter the Conciliator issued certificate and permitted the applicant union to move this Court.

4. According to the union the financial transaction of the bank has been increased from time to time from 1998 and to show the increase in financial transactions the applicant has attached Annexure-II to the application. Despite of the fact that workload increased, the financial transaction increased, yet the strength of the staff it remains the same. The management introduced new scheme for the upliftment of the agriculturist and that scheme is called as MOU Scheme. The officers were sent on deputation to various Co-operative Societies and the Banks such as, Nagpur District Central Co-operative Bank, Gadchiroli District Central Co-operative Bank, Wardha District Central Co-operative Banks and Buldhana District Central Co-operative Banks, etc.

5. About 15 Co-operative Sugar Factories and Spinning Mills are supervised by the officers of the bank those who are deputed by the respondent. However, no replacement is provided in their place. Considering over all situation the union submitted demand and requested the management to modify the staffing pattern as shown in Annexure I and the union submitted the demands/claim and by that demanded to introduced new staffing pattern comprising of 710 staff members as intimated in Annexure I w. e. f. 25th August 1999 and prayed to work out the wages payable to 710 employees from 25th August 1999 and distribute that amount amongst the staff members with other prayers.

6. The non-applicants were duly served and they have filed reply *vide* Exh.8 and denied all the contentions of the applicant. According to the non-applicants the excessive demands are there from the side of the union. The union cannot be allowed to speak about the persons beyond the territory of Nagpur. Manewada and Dighori Branches are newly opened in the year 2000 this is not disputed by the non-applicant. Though the business is increased in terms of money yet it cannot be measured in terms of work so as to say that the efficiency of the employees is adversely affected. The notice of change which is alleged by the union, its receipt is not denied by the respondent. However, the contention of the non-applicants is that the demand of the union are unreasonable. Normally no staff member is sent on deputation as alleged by the applicant nor the work of supervision of Co-operative Sugar Factories is assigned to any employee of the non-applicant. The proposed staff pattern is denied in *toto* by the non-applicants.

7. On the rival pleadings of the parties the points for determination were framed by my learned predecessor. They are at Exh.9. I have recorded my findings against each of them for the reasons to follow.

<i>Points</i>	<i>Findings</i>
(1) Whether the reference is tenable ?	Partly proved.
(2) Whether the case is made out to implement the staffing pattern by increasing the staffing members as claimed?	No.
(3) Is the applicant entitled for the monetary benefits as claimed for ?	No.

(4) What relief and order ?

As per final order.

Reasons

8. I heard Advocate Marpakwar for the applicant union and Advocate Ghate for the non-applicant Bank and I have perused the record.

AS TO POINT NO. 1 :—

9. About the maintainability of the reference one has to ascertain whether herein this case we have to consider Section 73-A of the B.I.R. Act. On going through that section it is clear that one of the important factor which the applicant union has to bring on record is the certificate issued by the conciliator in regard to inability to have a conciliation. Alongwith the list of documents Exh.3 the certificate as contemplated under sub-clause 3 of Section 73-A is placed on record by the applicant-union. Therefore, the reference is maintainable. However, on going through the certificate which is at Exh.3/3 it is clear that no documentary proof is placed on record by the applicant union to show that as directed in this certificate Exh.3 /3 the union has submitted the copy of Exh.1 /application to the Conciliator. Therefore, one of the condition as laid down in Exh.3/3, the certificate issued by Conciliators it is not complied by the union. With the result, there is a breach of condition laid down in Exh.3/3. However, the provisions of sub-section (3) of Section 73-A are complied with by the applicant-union. With the result I answer the point No.1 as partly proved.

10. In support of the claim so put-forth by the applicant union the applicant union has submitted an affidavit of one Mahendra Ogale as evidence from the side of the applicant at Exh.21. However, this witness failed to remain present for cross-examination despite of repeated chances were given to the witness No.1 Mahendra Ogale from August 2005. Therefore, though there is an affidavit by way of evidence from the side of the applicant, particularly that of Mahendra Ogale, but as he has not tendered himself for the cross-examination his examination-in-chief is not having any meaning in the eye of law. With the result, the applicant union failed to tender any cogent evidence in support of their claim. Exh.22 is a pursis filed by the non-applicant and thereby the non-applicant closed their side without examining any witness. Entire burden is on the applicant union but the applicant-union failed to adduce substantial evidence in support of their claim. With the result I answer point nos 2 to 4 in negative and I proceed to pass the following award.

Award

- (1) The reference is answered in negative.
- (2) Parties to bear their own costs.
- (3) Copy of this Award be forwarded to the Conciliator as per Chapter XI of the B. I. R. Act, 1946.

V. G. KHARE,
Member,
Industrial Court, Nagpur.

Nagpur, dated 21st November 2005.

Additional Commissioner of Labour,
Nagpur.